

Appl. No. 09/548,734  
Amdt. Dated July 13, 2004  
Reply to Office Action of May 20, 2004

REMARKS

This Amendment is in response to the Non-Final Office Action dated May 20, 2004. Claims 1 through 5, 7 through 16, and 18 5 through 25 remain pending in this case. Claims 1, 12, and 23 have each been currently amended.

As will be discussed below, Applicants have further amended the Claims to more clearly distinguish over the teachings of the 10 prior art. It is believed that the claims as now presented are patentable and in condition for allowance.

"Claims 1-6, 7-16, and 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pingali (US PAT. 6,005,610) in 15 view of Potts et al. (US PAT. 6,593,956 hereinafter Potts)." It is believed that the Examiner inadvertently included Claim 6 as an active claim. However, Claim 6 was previously canceled.

Applicants agree with the Examiner in his commenting that 20 "Pingali differs from the claimed invention in not specifically teaching to apply the set of rules to each of the audio locator output and video locator output to determine which one of the audio locator output and the video output locator will be utilized to adjust a setting of the camera so that the camera is adjusted by 25 utilizing only the selected one of the audio locator output and the

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video locator output in accordance with the applied set of rules."

In Claim 1, as currently amended, Applicant is now claiming the step of ". . . applying a set of confidence level rules to 5 each of the audio locator output and video locator output to determine which one of the audio locator output and the video locator output has a higher confidence level, whereby the one having the highest confidence level will be utilized independently from the other to adjust a setting of the camera during each one of 10 said successive plural measurement intervals, but if in a measurement interval the confidence levels are equivalent, the video locator output is used if above an established threshold, otherwise the audio locator output is utilized; . . ." This step is followed by the step of "adjusting the camera setting utilizing 15 only the selected one of the audio locator output and the video locator output in accordance with the applied set of confidence level rules."

Claim 12, as currently amended, now calls for from amongst 20 other elements ". . . a processor coupled to the camera and operative (i) to process an audio locator output from an audio input signal, and a video locator output from a video input signal derived partly from movement of the object, each indicative of a location of the object of interest for particular ones of given

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measurement intervals of a plurality of successive measurement intervals; and (ii) to apply a set of confidence level rules to each of the audio locator output and the video locator output to determine which one of the audio locator output and the video locator output has a higher confidence level, whereby the one having the highest confidence level will be utilized independently of the other to adjust a setting of the camera based on the given measurement interval."

10        Claim 23, as currently amended, now calls for from amongst other steps the step of ". . . applying a set of confidence level rules to each of the audio locator output and video locator output to determine which one of the audio locator output and the video locator output has a higher confidence level, whereby the one

15        having the highest confidence level will be utilized independently of the other to adjust a setting of the camera based on a given measurement interval; . . . . This step is followed by the step of "adjusting the camera setting utilizing only the selected one of the audio locator output and the video locator output in accordance

20        with the applied set of confidence level rules."

The Examiner, in interpreting the teachings of Potts, believes that "Potts teaches a method for locating an audio source in a video conferencing system comprising an audio based locator (70,

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figure 3) and a video based locator (60, figure 30), wherein a speaker validation and framing module utilizing only a selected one of the audio based locator output and the video based locator output in accordance with a set of rules in order to improve the overall performance of the automatic camera pointing system by decreasing the response time and preventing gross pointing errors (col. 22 line 16 through col. 26 line 41)." The Examiner stated that it would be obvious to one of skill in the art to combine the teachings of Pingali and Potts to obtain a method and system as claimed by Applicants. There is nothing in either Pingali or in Potts that would lead one of ordinary skill in the art to combine the teachings of each of these references together. Nor is there even a suggestion in either that such a combination would be feasible or desirable. The case law is clear in holding that there must be at least some suggestion in cited prior art for combining the teachings of two references together to obtain a specific result. Also, the case law is clear as to the necessity for avoiding the use of hindsight in applying the teachings of references for rejecting claims. The undersigned respectfully requests that the Examiner consider the following citations from relevant cases:

The courts have long held that there must be some teaching in the references cited to suggest the combination of

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the references in a manner to obtain the combination of elements of the rejected claim(s). It is well known that in order for any prior art references themselves to be validly combined for use in a prior-art § 103 rejection, the references themselves, or some other prior art, must suggest that they be combined. For example:

10                  The Board has stated in *Ex parte Levengood*, 28 USPQ 2d 1300 (PTOBA&I 1993):

"In order to establish prima facie case of obviousness, it is necessary for the examiner to present evidence, preferably in the form of some teaching, suggestion, incentive or inference in the applied prior art, or in 15 the form of generally available knowledge, that one having ordinary skill in the art would have been led to combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention. ... That which is within the capabilities of 20 one skilled in the art is not synonymous with obviousness. ...That one can reconstruct and/or explain the theoretical mechanism of an invention by means of logic and sound scientific reasoning does not afford the basis for an obviousness conclusion unless that logic and

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reasoning also supplies sufficient impetus to have led one of ordinary skill in the art to combine the teachings of the references to make the claimed invention.... Our reviewing courts have often advised the Patent and Trademark Office that it can satisfy the burden of establishing a *prima facie* case of obviousness only by showing some objective teaching in either the prior art, or knowledge generally available to one of ordinary skill in the art, that 'would lead' that individual 'to combine the relevant teachings of the references which describe various aspects of a patent applicant's invention without also providing evidence of a motivating force which would impel one skilled in the art to do what the patent applicant has done.'

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As was further stated in Uniroyal, Inc. v Rudkin-Wiley Corp., 5 U.S.P.Q.2d 1434 (C.A.F.C. 1988), "where prior art references require selective combination by the court to render obvious a subsequent invention, there must be some reason for the combination other than hindsight gleaned from the invention itself .... Something in the prior art must suggest the desirability and thus the obviousness of making the combination."

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It is stated in In re Sernaker, 217 U.S.P.Q. 1, 6

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(C.A.F.C. 1983): "prior art references in combination do not make an invention obvious unless something in the prior art references would suggest the advantage to be derived from combining their teachings."

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It is clear that the suggestion to combine references should not come from Applicant, as was forcefully stated in Orthopedic Equipment Co. v United States, 217 U.S.P.Q. 193, 199 (C.A.F.C. 1983): "It is wrong to use the patent in suit [here the application] as a guide through the maze of prior art references, combining the right references in the right way to achieve the result of the claims in suit [here the claims pending]. Monday morning quarterbacking is quite improper when resolving the question of nonobviousness in a court of law [here the PTO]."

Also, the case law is clear in guarding against the use of hindsight in reading Applicants invention into the prior art, which art is clearly not disclosing the Applicants invention as claimed. Applicants would like to bring the following cases to the Examiner's attention:

The Supreme Court in Calmar, Inc. v. Cook

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Chemical Co., 383 U.S. 1, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966), in which the Court warns the dangers of "slipping into hindsight", citing the case of Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co., 332 F.2d 406, 141 U.S.P.Q. 549 (6th Cir., 1964), where the doctrine is stated:

We now come to the patented device which after all is the subject matter of this case. At the outset we take note of two well-established principles. The first is that in considering the questions of obviousness, we must view the prior art from the point in time prior to when the patented device was made. Many things may seem obvious after they have been made and for this reason courts should guard against slipping into use of hindsight. We must be careful to "view the prior art without reading into that art the teachings of appellant's invention." Application of Sporck, 301 F.2d 686, 689 (C.C.P.A.).

In addition to the above, Applicants urge that Potts does not operate in the manner indicated by the Examiner, or in a manner similar to that of the present invention as claimed. More specifically, it is respectfully requested that the Examiner

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reconsider his review of Potts relative to the following review of the teachings of Potts. First, in his "Abstract" Potts indicates from amongst other things that "the audio source locator processes the image signals and audio signals to determine a direction of the 5 audio source relative to a reference point. The system can further determine a location of the audio source relative to the reference point. The reference point can be a camera. The system can use the direction and location information to frame a proper camera shot which would include the audio source." **In other words, it is**  
10 **clear that Potts always uses image signals and audio signals to locate an audio source in a video conferencing system.** This is further emphasized in the detailed teachings of Potts. More specifically, in column 2, lines 40 through 58, it is indicated that "the audio source locator detects the image of the face of a 15 speaking person by detecting a speaking person based on the audio signals, detecting images of the faces of a plurality of persons based on the video signals, and correlating the detected images to the speaking person to detect the image of the face of the speaking person." Still further it is indicated that "The audio source 20 locator determines an offset of the video based location of the image from a predetermined reference point in a frame of video and

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modifies the audio based detection, based on the offset, to determine the direction of the audio source relative to the reference point." And yet further still it is indicated that "The audio source locator uses a previously determined offset of a video based location of an image in a previous frame of video and modifies the audio based direction to determine the direction of the audio source." The Examiner's attention is further directed to column 3, lines 3 through 55, and column 4, lines 8 through 29. Specifically to column 4, lines 25 through 30, where it is indicated that "Determining the direction and/or location of an audio source relative to a reference point based on both audio and video provides for a system of checks and balances improving the overall performance of the automatic camera pointing system." Even more specifically, in column 5, lines 7 through 11, it is indicated that "**because the results from the audio based locator are not used by themselves but in combination with the video technology, embodiments of the audio based locator can be implemented using components which are not as precise as they may otherwise have to be.**" CLEARLY, Such operation is contrary to the Examiner's interpretation of the teachings of Potts. Potts is actually teaching away from Applicants' invention as now claimed. Even if

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Potts and/or Pingali had some suggestion and for combining the teachings thereof with the other, although they do not, such a combination of teachings would not result in a method or system as now claimed by Applicants. Clearly, Potts and Pingali teach away 5 from the present invention as claimed.

The Examiner's attention is further directed to various teachings in the "Description" of Potts. The sections include column 6, lines 27 through 31, and 47 through 50; column 7, lines 10 32 through 67; column 8, lines 1 through 7, and 55 through 59; particularly column 19, lines 53 through 65, column 20, lines 5 through 10; and column 23, lines 9 through 23. Also, Potts is clearly claiming a system and method that are different from and teaching away from the present invention as claimed. More 15 specifically, the Examiner's attention is directed to Claims 1, 6, 7, 13, 14, 15, 16, 17, 18, 24, 29, 30, and 55 all of which show in addition to the description of the invention of Monsieur Potts, that Potts is teaching and claiming a method and system that is different than that as now claimed by Applicants.

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Applicants have shown that the teachings of the cited references, whether taken individually or in combination, do not anticipate or make obvious the claims of Applicants as now presented.

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Accordingly, it is respectfully requested that the claims be allowed, and the case passed to issue.

Respectfully submitted



Kenneth Watov  
Registration No. 26,042  
Attorney for Applicants

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Please Address All Correspondence to:  
Gregory L. Thorne, Esq., Reg. No. 39,398  
Philips Intellectual Property & Standards  
P.O. Box 3001  
20 Briarcliff Manor, NY 10510  
(914) 945-6000

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